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sufficient volume to prevent contained liquid from reaching said fluid exit when said apparatus is inverted.

36(currently amended) - The apparatus according to claim 35 wherein said closure further includes a spout, ~~said outlet passage extending through said spout~~ with a through hole which provides for communication between the end of said spout and said fluid exit.

37(canceled)

38(previously presented) - The apparatus according to claim 35 wherein said outlet passage is at least one single loop helix.

39(previously presented) - The apparatus according to claim 35 wherein said fluid entrance is at substantially the lowest liquid level when said container is inverted.

40(previously presented) - The apparatus according to claim 35 wherein said outlet passage has a volume greater than .060 cubic inches.

41(new) - The apparatus according to claim 21 wherein said closure has multiple recessed channels.

42(new) - The apparatus according to claim 28 wherein said container has multiple recessed channels.

43(new) - The apparatus according to claim 35 wherein said outlet passage is formed from multiple said first recessed channels and multiple said second recess channels.

#### REMARKS - General

Applicants have changed the title to include the feature of the recessed channel.

Applicants have resubmitted the amendments to the specification in the proper format. The changes to the specification will provide for proper antecedent basis for the claimed subject matter which was clearly shown in the original drawings, thus it is not new matter.

Applicants have eliminated the need for drawing amendments through cancellation of 3 claims.

Applicants have added 3 new claims 41-43, however they are essentially the same as the original claims 5, 12, and 19.

#### **The Rejection of Claims Under 35 USC § 112**

Claims 23, 30, and 37 were rejected under 35 U.S.C. § 112 for containing subject matter not described in the specification. These claims are being canceled per this amendment.

Claims 22, 29, and 36 were rejected under 35 U.S.C. § 112 for containing subject matter not described in the specification. These claims are being amended to replace the unsupported subject matter with that which is supported by the original disclosure.

#### **The Rejection of Claims Under 35 USC § 103**

Claims 21, 23-28, 30-35, and 37-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over Adado (US 5,253,780) in view of Levy et al. (US 4,442,948).

Applicants request reconsideration and withdrawal of this rejection in view of the following:

**References teach away from invention:** Both Adado and Levy et al. teach directly away from the invention as claimed. Adado teaches a cover for a beverage container which has both a free flowing vent system and outlet passage, thus Adado is only spill resistant. Levy et al. teaches a drinking vessel containing an inner and outer shell which forms a fluid flow path (built-in straw) when assembled. Levy et al. does not disclose a cover for the drinking vessel, thus Levy et al. is not even spill resistant.

**References are individually complete:** Both Adado and Levy et al. are functional by themselves, thus there would be no reason to combine these references.

**Unsuggested combination:** Adado and Levy et al. do not contain any suggestion that they be combined, or that they be combined in the manner suggested.

**References take different approaches:** Adado and Levy et al. take mutually exclusive paths and reach different solutions to different problems. Since they teach away from each other and solve different problems, it would not

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be logical to combine them.

**Inoperative combination:** If Adado and Levy et al. were combined, the result would produce a non-functional device. Adado is inverted while drinking from the container, while Levy et al. is upright during consumption of the beverage.

**Synergism:** The result achieved by the invention (leak-proof when inverted) is greater than the sum of the results of combining Adado and Levy et al.

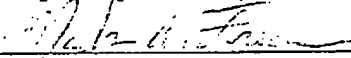
Claims 22, 29, and 36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Adado as modified and further in view of Snider (US 5,147,066).

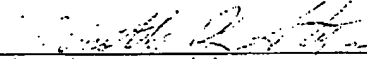
Applicants request reconsideration and withdrawal of this rejection based on the above statements with respect to the independent claims.

#### Conclusion

Based on the above, it can be concluded that the present invention would not have been obvious to one of ordinary skill in the art. The combination of Adado and Levy et al. is illogical and unsuggested, thus it would not be obvious to one of ordinary skill in the art. In addition, applicants respectfully submit that the structure of claims 21, 28, and 35 yields new and unexpected results when compared to the results of Adado as modified. Applicants propose that the claims all define patentably over the prior art, therefore they submit that this application is now in condition for allowance, which action they respectfully solicit.

Very respectfully,

  
Mark A. Freeman

  
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